IN THE PARSI CHIEF MATRIMONIAL COURT AT BOMBAY

O. O. C. J.

PARSI SUIT NO.25 OF 2004

Dinaz D. Avasia ..Plaintiff No.1.

and

Deanyar D. Avasia ..Plaintiff No.2.

....

Ms.A.S.Khushrushahi for Plaintiff No.1.

Ms.ZS.Irani for Plaintiff No.2.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

(Aided by a forewoman,
two Gentlemen and
one Lady)

4th March, 2005.

ORAL JUDGMENT :

1. This is a suit for divorce by mutual consent under Section 32-B of the Parsi Marriage and Divorce Act, 1936 ("the Act"). The parties are both Parsi Zoroastrians and were married on 17th

December, 1981, according to Parsi Zoroastrian rites and customs. There is one issue from the marriage, a daughter born on 28th November, 1982, and she is now 22 years of age. Serious differences arose between the parties in 1998 and on 12th May, 2003, a criminal complaint was lodged by the First Plaintiff against the Second Plaintiff in the Court of the Metropolitan Magistrate at Girgaum. The parties have arrived at Consent Terms which are annexed at Exh.B to the Plaint.

2. The following issues were framed in the suit :

1. Whether the parties were married to each other according to the Parsi Zoroastrian rites and customs at Mumbai on the 17th December, 1981?

2. Whether the Plaintiffs have been living separately for more than a year i.e. sometime in the year 2000, set out in the Plaint?

3. Whether there is any force, fraud or coercion on either party in filing the

above suit?

4. Whether there is any improper delay in filing this suit?

5. Whether there is any legal ground why the reliefs claimed for should not be granted?

3. Four delegates have been present at the trial which constitutes a sufficient quorum under the provisions of Section 44 of the Act.

4. The delegates have advised the Court that the first and second issues are answered in the affirmative while the remaining three issues are answered in the negative.

5. Though a view has been taken by F.I.Rebello, J. in **Curys Kersie Vandrevala and Kareena C. Vandrevala** (Suit No.15 of 2004, decided on 18th October, 2004), that it is not necessary for the Court to consult the delegates in a suit under Section 32-B for divorce by mutual consent, the Court has been informed that a challenge is pending

to the aforesaid order. In order to obviate any difficulty and by way of abundant caution, I have taken the view of the delegates so that the suit for divorce by mutual consent can be disposed of.

6. Both the parties have stepped into the witness box in support of their respective cases for divorce by mutual consent. I am of the view, on the basis of the evidence which has been recorded, that the marriage has been solemnised under the provisions of the Act; that the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud.

7. There is no reason why the prayer sought in the suit should not be allowed. A divorce by mutual consent is in the interest of both the parties and having regard to the fact that they have lived apart for a period in excess of one year, there is no possibility now of a reconciliation. The suit is accordingly, decreed in terms of prayer clause (a). No order as to costs.